

August 3, 2016

Samuel J. Clark
City Attorney
15 Kellogg Blvd. West
400 City Hall
Saint Paul, MN 55102

Re: Rail Employee Exemption: Earned Sick and Safe Time Resolution

Dear Mr. Clark:

Union Pacific Railroad (UP) respectfully requests that the City of Saint Paul confirm that the city's proposed *Earned Sick and Safe Time Resolution* does not apply to railroad employees subject to the Railroad Unemployment Insurance Act ("RUIA"), 45 U.S.C. § 351 *et seq.*

Specifically, the RUIA provides up to 26 weeks of sickness benefits for railroad employees who are unable to work due to illness, injury, or pregnancy. See 45 U.S.C. 351 *et seq.*

When Congress passed the RUIA, it was very clear that federal law would be the sole source of sickness benefits for railroad employees. The Act states that "[b]y enactment of this chapter the Congress makes **exclusive provision** . . . for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this chapter)." 45 U.S.C. § 363(b) (emphasis added). It further states that "**no employee shall have or assert any right to . . . sickness benefits under a sickness law of any State** with respect to sickness periods occurring after June 30, 1947, based upon employment (as defined in this chapter)." *Id.* (emphasis added). It goes to provide that "Congress finds and declares that by virtue of the enactment of this chapter, the application of . . . State sickness laws after June 30, 1947, to such employment, except pursuant to section 362(g) of this title, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce." *Id.*

Given this express preemption language, employees of Union Pacific covered by the RUIA are not subject to the *Earned Sick and Safe Time Resolution*. In fact, several other states and municipalities that have examined this issue have agreed with Union Pacific on this point.

In 2013, after the City of Seattle passed a paid sick leave ordinance, Union Pacific filed a lawsuit, and the City ultimately agreed that it would not enforce the ordinance against railroads subject to the RUIA. Subsequent similar ordinances in the cities of Eugene and Portland, Oregon – and the State of Oregon's recently enacted sick leave law – expressly exclude employees who are covered by the RUIA.

Moreover, a federal court has now ruled on this exact issue, confirming that the RUIA does indeed preempt *all* state and local paid sick leave laws.

The Commonwealth of Massachusetts recently passed a paid sick leave law. Unlike Oregon's law, the Massachusetts law did not contain an express exemption for railroad employees subject to the RUIA. The railroads asked the Commonwealth to confirm that their employees were not subject to the state law, and when the Commonwealth refused to agree, the railroads filed suit. In its ruling on this dispute, the federal court held as follows:

"The plain textual meaning is clear: Congress intended the RUIA to serve as the 'exclusive' source of all sickness benefits for railroad employees and to preclude the employees from claiming rights to sickness benefits under any state sickness law. The general and unqualified references to 'sickness benefits' and 'sickness law' demonstrate that Congress intended the express preemption provision to apply to all state sickness benefits and sickness laws, not just state sickness benefits which duplicate the RUIA's benefits and state sickness laws which exactly replicate the RUIA."

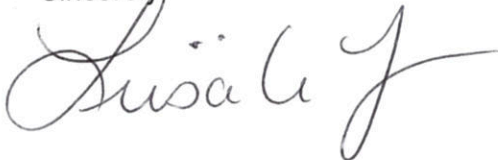
In any event, railroad employees were plainly not the intended beneficiaries of the new Ordinance.

Railroad employees enjoy some of the best pay and benefits in the country. In fact, railroads are one of the top 10 highest-paying industries in America. Railroad employees also enjoy substantial time off, including both paid and unpaid leave. Paid leave for unionized employees includes up to 5 weeks of vacation, holidays, and personal leave (which can be used for any purpose). Other employees are covered by collectively bargained "supplemental sickness" benefit plans, which enhance the benefits paid under the RUIA. Thus, while railroad leave benefits may not match the criteria specified in the new legislation, it should be clear that railroad employees are already able to take significant time off from work without worrying about the financial consequences of doing so.

For these reasons, Union Pacific requests that the City of Saint Paul either amend the proposed *Earned Sick and Safe Time Resolution* to provide for an express exemption of railroad employees, or otherwise confirm that the railroads will not be required to provide the benefits which will be mandated in the Resolution to any current or future employees who work in Saint Paul. Absent such confirmation, Union Pacific reserves the right to pursue legal action in any appropriate forum to confirm the preemptive effect of the RUIA and/or other federal law.

If you have any questions or require more information, please feel free to contact me. Thank you for your consideration, and I look forward to hearing from you.

Sincerely,



cc: Mayor and Council Members, City of Saint Paul
Pat Kiscoan, Esq.